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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,672

05/09/2006

Annelies Resink

BJS-3665-178

9794

23117 7590 06/23/2008  
NIXON & VANDERHYE, PC  
901 NORTH GLEBE ROAD, 11TH FLOOR  
ARLINGTON, VA 22203

EXAMINER

ARCHIE, NINA

ART UNIT

PAPER NUMBER

1645

MAIL DATE

DELIVERY MODE

06/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,672	<b>Applicant(s)</b> RESINK ET AL.	
	<b>Examiner</b> Nina A. Archie	<b>Art Unit</b> 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 13-23 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

1. Group I: claims 13-20, drawn to a method for detecting the presence or the risk of developing an encaphalopathy in a mammal.
2. Group II: claims 21 and 23, drawn to a product/kit comprising a support on which is immobilized at least one nucleic acid comprising a sequence selected from SEQ ID NO: 1-26 or a fragment thereof containing at least 5, preferably 6, 7, 8, 9, or 10 consecutive bases, or a sequence complementary thereto.
3. Group III: claims 22, drawn to a product comprising a support on which is immobilized at least one polypeptide coded by nucleic acid comprising a sequence selected from SEQ ID NO: 1-26 or a fragment thereof containing at least 9 consecutive bases, or a sequence complementary thereto.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

4. The technical feature of Group II is drawn to a product/kit comprising a support on which is immobilized at least one nucleic acid comprising a sequence selected from SEQ ID NO: 1-26 or a fragment thereof containing at least 5, preferably 6, 7, 8, 9, or 10 consecutive bases, or a sequence complementary thereto. The technical feature of Group II is anticipated by Benson et al WO 2002060317 Date August 8, 2002. Benson et al teaches a drawn to a product comprising a support on which is immobilized at least one nucleic acid fragment containing at least 5, preferably 6, 7, 8, 9, or 10 consecutive bases sequence from SEQ ID NO: 10 (see STIC results claim SEQ ID NO: 704).

Art Unit: 1645

5. Group I is a method of use of the technical feature of Group II and Group III, a product/kit comprising a support on which is immobilized at least one nucleic acid comprising a sequence selected from SEQ ID NO: 1-26 or a fragment thereof containing at least 5, preferably 6, 7, 8, 9, or 10 consecutive bases, or a sequence complementary thereto and a product comprising a support on which is immobilized at least one polypeptide coded by nucleic acid comprising a sequence selected from SEQ ID NO: 1-26 or a fragment thereof containing at least 9 consecutive bases, or a sequence complementary thereto.
6. The technical feature of Group III is a product comprising a support on which is immobilized at least one polypeptide coded by nucleic acid comprising a sequence selected from SEQ ID NO: 1-26 or a fragment thereof containing at least 9 consecutive bases, or a sequence complementary thereto.
7. Groups I, and III lacks unity with Group II because they do not have the same technical feature.

The technical feature of Group II, a product/kit comprising a support on which is immobilized at least one nucleic acid fragment comprising a sequence from SEQ ID NO: 10 containing at least 5, preferably 6, 7, 8, 9, or 10 consecutive bases is known in the art. Group II lacks unity with Groups I and III because the technical feature of Group II is anticipated by the art and therefore not “special” within the meaning of PCT Rule 13.2 because it does not provide for a contribution that the claimed invention makes over the art.

### **Polypeptide Election Requirement to Groups I and III**

In addition, Group III, detailed above, read on patentably distinct sequences. Each sequence is patentably distinct because they are structurally different and a further restriction is applied to each Group.

Applicant must further elect:

For Group III choose the polypeptide from SEQ ID NOs: 1-26.

**Applicant is advised that examination will be restricted to only the elected nucleotide sequence and should not be construed as a species election.**

**Nucleic Acid Election Requirement to Groups I and II**

In addition, Groups I and II, detailed above, read on patentably distinct sequences. Each sequence is patentably distinct because they are structurally different and a further restriction is applied to each Group.

Applicant must further elect:

For Groups I and II choose the nucleic acid from SEQ ID NOs: 1-26.

**Applicant is advised that examination will be restricted to only the elected nucleotide sequence and should not be construed as a species election.**

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nina Archie whose telephone number is 571-272-9938. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's acting supervisor, Shanon Foley can be reached on 571-272-0898. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nina A Archie/  
Examiner, Art Unit 1645  
/N. A. A./  
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Nina Archie  
Patent Examiner  
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/Mark Navarro/  
Primary Examiner, Art Unit 1645